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SOMERSET, NEW JERSEY 08873
908-563-2700

888 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-4103
202-296-8600

February 9, 1995

VIA MESSENGER

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenues
Washington, D.C. 20423

19235

Attention: Ms. Janice Fort, Room 2311

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 48 U.S.C. Section 11303(a) are three original executed counterparts and two photostatic copies of an Interim User Agreement (the "Agreement"), dated as of January 31, 1995, a primary document as defined in the Commissioner's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed Agreement are:

Owner: Johnstown America Corporation
17 Johns Street
Johnstown, PA 15901

User: Kansas City Power & Light Company
1201 Walnut Street
Kansas City, Missouri 64106-2124

A description of the railroad equipment covered by the enclosed document is set forth in the Agreement.

02/08/95
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Counterparts - 2. 8/8/95

Mr. Vernon A. Williams
February 9, 1995
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return two stamped original counterparts and two stamped photostatic copies of the enclosed document and the stamped photostatic copy of this letter to Susan F. Lifvendahl at Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, Illinois 60601.

Following is a short summary of the enclosed document:

Document to be Recorded

Interim User Agreement dated as of January 31, 1995 between Johnstown America Corporation, Owner, and Kansas City Power & Light Company, User, relating to the use of 625 Aluminum BethGon Coalporter railcars.

Very truly yours,


Susan F. Lifvendahl

SFL/ej
w/encl.

cc: Michael P. Siska, Jr.
Robert W. Kleinman
Susan G. Lichtenfeld



Interstate Commerce Commission
Washington, D.C. 20423-0001

2-9-95

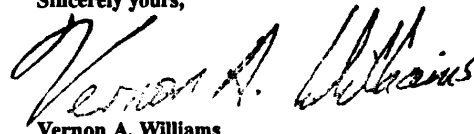
Office Of The Secretary

Susan F. Lifvendahl
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601-7567

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/9/95 at 2:50PM, and assigned recordation number(s). 19235.

Sincerely yours,

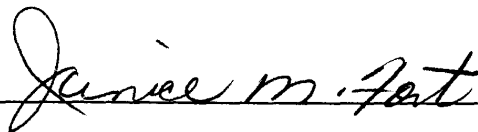

Vernon A. Williams
Secretary

Enclosure(s)

(0100520050)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



19235

INTERIM USER AGREEMENT

Dated as of February 6, 1995

between

JOHNSTOWN AMERICA CORPORATION,

and

KANSAS CITY POWER & LIGHT COMPANY

625 Aluminum BethGon Coalporter Railcars

INTERIM USER AGREEMENT

THIS AGREEMENT, dated as of February 6, 1995, by and between JOHNSTOWN AMERICA CORPORATION, a Delaware corporation (the "Johnstown") and KANSAS CITY POWER & LIGHT COMPANY, a Missouri corporation ("KCPL").

W I T N E S S E T H:

WHEREAS, KCPL desires to acquire the use of 625 aluminum BethGon coalporter railcars, to bear railroad road marks and numbers set forth on Schedule 1 hereto, (collectively the "BethGons" and individually a "BethGon");

WHEREAS, KCPL and Johnstown have contracted for the purchase and sale of the BethGons pursuant to the proposal letter from Johnstown to KCPL dated August 10, 1994, subsequent correspondence between Johnstown and KCPL and KCPL's Purchase Order No. 0307034-000-KP dated October 25, 1994 (the "Purchase Order");

WHEREAS, KCPL is obtaining commitments to finance the purchase of the BethGons pursuant to one or more permanent forms of financing (the "Financing") and anticipates that there will be two closings, with the first closing date to occur on or about February 14, 1995 (the "First Closing") and the second closing date to occur on or about March 7, 1995 (the "Second Closing").

WHEREAS, KCPL desires that it be permitted to use the BethGons pending the closing of such Financing, and Johnstown is willing to grant such temporary custody and possession to KCPL, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Order, Johnstown agrees to deliver physical possession of the BethGons to KCPL, FOT Johnstown, Pennsylvania. The rights of KCPL hereunder in respect of each BethGon shall commence on the date of acceptance of each group of 125 BethGons by KCPL from Johnstown, with respect to the BethGons accepted thereunder (the "Acceptance") and, unless sooner terminated pursuant to the provision hereof, shall end on the date of payment of the purchase price of such BethGon by KCPL, or by its designee under the Financing (the "Closing"). Whether or not the Financing shall then have occurred, KCPL, on March 30, 1995,

shall purchase and pay for, in cash, all BethGons previously accepted by KCPL and not previously paid for by KCPL or its designee, and the obligation of KCPL so to do shall be absolute and unconditional, regardless of the condition of such BethGons or any other event or circumstance. At each Closing with respect to any BethGons, Johnstown shall sell such BethGons to KCPL or such purchaser as KCPL may provide, at the purchase price of \$50,628.54 per BethGon, plus applicable taxes and other charges, if any, as set forth in the Purchase Order. Nothing in this Agreement shall relieve KCPL of its obligation to take, purchase and pay for the BethGons in accordance with the terms of the Purchase Order nor shall it relieve Johnstown of its obligations under the Purchase Order.

2. On Acceptance of any BethGon, KCPL shall assume the responsibility and risk of loss with respect to such BethGon and will deliver to Johnstown a Certificate of Acceptance substantially in the form attached hereto as Exhibit A (the "Certificate of Acceptance"). Execution of the Certificate of Acceptance by KCPL shall constitute acceptance by KCPL of the BethGons identified in the Certificate of Acceptance for all purposes of this Agreement and the Purchase Order. On Acceptance, Johnstown's warranty with respect to such BethGon will commence.

3. Full and complete title to the BethGons shall remain in Johnstown until each Closing for such BethGon and KCPL's rights and interests therein shall be solely that of temporary possession, custody, and use under this Agreement. Neither KCPL nor any person claiming by through or under KCPL shall acquire any title to or ownership of the BethGons, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the BethGons by KCPL under or pursuant to this Agreement. Transfer of title to any BethGon to KCPL or to any purchaser provided by KCPL shall be effected only at each Closing by delivery by Johnstown of a bill of sale to KCPL or to such purchaser; provided, however, that title to different BethGons may be transferred at different times and under separate bills of sale, to the extent that such BethGons shall be subject to different financing arrangements. When the purchase price of any BethGon has been paid in full to Johnstown, together with all other amounts payable to Johnstown hereunder with respect to such BethGon, and Johnstown has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such BethGon without further action by or notice to any party concerned. Prior to delivery of any BethGon, KCPL shall do such acts as may be required by law, or requested by Johnstown, for the protection of Johnstown's title to and interest in the BethGons, including, without limitation, recording, at KCPL's expense, a fully signed counterpart of this Agreement with the Interstate Commerce Commission ("ICC"), with the corresponding offices in Canada if any of the BethGons will be used in Canada,

and wherever else necessary to protect Johnstown's interest. Upon receipt of all payments required to be made hereunder and under the Purchase Order with respect to any BethGons, Johnstown shall, at the request of KCPL, deliver to KCPL or its designee a release of Johnstown's right, title and interest in such BethGons, such release to be in form suitable for filing with the ICC.

4. This Agreement is an arrangement under which KCPL will have temporary possession, custody, use and quiet enjoyment of the BethGons to be purchased from Johnstown, and the risk of loss of the BethGons after Acceptance is on KCPL. KCPL will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are in keeping with the terms applicable to other railcars owned or leased by KCPL: (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of any BethGon; and (ii) property damage insurance on the BethGons; provided, however, that KCPL may self-insure with respect to any or all of the above as is customary under KCPL's risk management program; and provided, further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by KCPL. Any liability insurance policies maintained by KCPL while this Agreement is in effect shall name Johnstown as an additional insured and KCPL agrees to provide Johnstown, upon Johnstown's reasonable request, with such information concerning any insurance policies maintained by KCPL as Johnstown may reasonably request.

5. KCPL agrees, so long as this Agreement remains in effect, (i) to use the BethGons exclusively in unit train service to deliver coal to or from one of its generating stations and (ii) that none of the BethGons shall be shipped beyond the boundaries of the United States, except with the prior written consent of Johnstown.

6. In addition to any other rights or remedies which Johnstown may then have under law, upon default by KCPL in performing any term of this Agreement or the Purchase Order, Johnstown, without demand or notice, may, but shall not be obligated to, terminate this Agreement, and upon such termination, KCPL shall, if requested by Johnstown, immediately assemble all of the BethGons, make them available to Johnstown at such place or places as Johnstown may designate and store, protect, maintain and preserve the BethGons pending receipt of further instructions from Johnstown, and shall thereafter transport all or any portion of the BethGons to such place or

places as Johnstown shall designate, all at the sole risk and cost of KCPL.

7. It is the intent of the parties that Johnstown shall suffer absolutely no loss as a result of this Agreement and KCPL agrees that it will permit no liens of any kind to attach to the BethGons (other than liens created by Johnstown), and that it will (a) indemnify, defend, and save harmless Johnstown from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature arising out of retention by Johnstown of title to the BethGons or out of the temporary possession, use and operation thereof by KCPL during the period when title thereto remains in Johnstown, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on Johnstown by any foreign, federal, state or local taxing authority and any fines, charges or penalties imposed against Johnstown in connection with any such income taxes), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the BethGons or Johnstown because of its retention of title to the BethGons or because of any person's use, marking, operation, management or handling of the BethGons after Acceptance and while title to such BethGons remains in Johnstown pursuant to this Agreement. Each party agrees to indemnify and hold harmless the other for any claims or costs imposed on the indemnified party as a result of a breach of this Agreement by the indemnifying party.

8. KCPL shall, at its own expense, keep and maintain the BethGons in good order, repair and running condition and will, at its option, repair or replace or promptly pay to Johnstown the purchase price in cash of those BethGons which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any BethGon, or any part thereof, may not be changed without the prior written approval of Johnstown. KCPL shall maintain, use and operate the BethGons in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any BethGon to KCPL it will be marked and numbered with its appropriate road designation; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by KCPL upon both sides of each BethGon in letters not less than one inch in height the following words:

Ownership Subject to a Security Agreement and Lease filed with the Interstate Commerce Commission.

No road marks or numbers shall be placed on the BethGons other than those specified in the first "Whereas" clause of this Agreement.

10. On each Closing of any BethGons, in addition to the amounts to be paid to Johnstown for the purchase of such BethGons pursuant to the provisions of Section 1 hereof, KCPL agrees to pay Johnstown in United States funds, by wire transfer to an account specified by Johnstown, to compensate Johnstown for its agreement to allow KCPL to take possession of and use such BethGons prior to each Closing, the following:

- (i) with respect to the BethGons to be delivered at the First Closing, \$7.00 per BethGon per day for each day elapsed from the date of Acceptance of such BethGon to the earlier of the First Closing or February 21, 1995, plus \$25.00 per BethGon per day for each day elapsed from February 21, 1995 to the date such BethGon is purchased and paid for;
- (ii) with respect to the BethGons to be delivered at the Second Closing, \$7.00 per BethGon per day for each day elapsed from the date of Acceptance of such BethGon to the earlier of the Second Closing or March 17, 1995, plus \$25.00 per BethGon per day for each day elapsed from March 17, 1995 to the date such BethGon is purchased and paid for; and
- (iii) all reasonable legal expenses incurred by Johnstown in connection with the negotiation, execution and delivery of this Agreement (not to exceed \$2,000), and all reasonable legal expenses incurred by Johnstown in connection with the enforcement of this Agreement, less any amounts previously paid by KCPL to Johnstown on account of such expenses.

11. KCPL hereby makes the following representations and warranties to Johnstown, the truth and accuracy of which shall be a condition precedent to the obligation of Johnstown to deliver any BethGons to KCPL hereunder:

- a. KCPL is a corporation, duly organized, validly existing and in good standing under the laws of the State of Missouri, has all requisite power and authority to execute and deliver and to perform its obligations under this Agreement and any related documents delivered by KCPL in connection herewith (hereinafter collectively referred to as the "KCPL Documents"), to carry on its business as now conducted, and is duly qualified and in good standing in such other

jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the KCPL Documents.

- b. The KCPL Documents have been duly authorized, executed and delivered by KCPL, and assuming the due authorization, execution and delivery of such documents by Johnstown, are legal, valid and binding instruments enforceable against KCPL in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.
- c. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by KCPL of the KCPL Documents.
- d. Neither the execution and delivery of the KCPL Documents nor the consummation of the transaction therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws of KCPL, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which KCPL is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the BethGons (other than any lien in favor of Johnstown) or upon any property of KCPL.
- e. Neither the execution and delivery by KCPL of the KCPL Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator.

Prior to the delivery of the first BethGon to KCPL hereunder, KCPL shall deliver an opinion of its counsel to Johnstown with respect to the matters set forth above, such opinion to contain such limitations and qualifications as may be reasonably acceptable to Johnstown.

12. Johnstown shall have the right to assign its rights under this Agreement, provided that Johnstown shall not have the right to assign its obligations arising under the Purchase Order, including, without limitation, its obligation to build and deliver the BethGons.

13. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.

14. This Agreement shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto. Any provision of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

15. Any amounts payable to Johnstown hereunder which are not paid when due shall bear interest from the due date thereof until paid at the rate of twelve percent (12%) per annum, but in no event greater than the maximum rate permitted by applicable law.

16. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to JOHNSTOWN AMERICA CORPORATION
17 Johns Street
Johnstown, Pennsylvania 15901
Attention: Michael Siska
Fax No. (814) 533-5064

With a copy to:

Robert W. Kleinman
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601
(312) 558-1000
Fax No. (312) 750-8600

If to KCPL:

1201 Walnut Street
Kansas City, Missouri 64106-2124
Attention: Treasurer
Fax No. (816) 556-2992

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION

By 

Name: Michael P. Siska

Its: Director, Marketing & Sales
Administration

KANSAS CITY POWER & LIGHT COMPANY

By 

Name: DAVID M. MCCOY

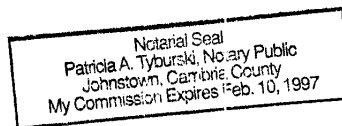
Its: SR. DIRECTOR - PROCUREMENT & SUPPORT SVCS.

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CAMBRIA)

On this 6 day of February, 1995, before me personally appeared Michael P. Siska, to me personally known, who, being by me duly sworn, says that he is the Director, Marketing & Sales Administration, of JOHNSTOWN AMERICA CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Tyburski
Notary Public

My commission expires: _____



STATE OF MISSOURI

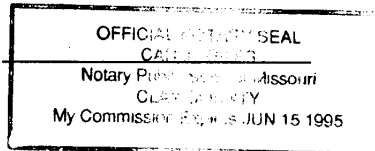
COUNTY OF Jackson

)
) SS:
)

On this 6th day of February, 1995, before me personally appeared David M. McCay to me personally known, who, being by me duly sworn, says that he is Senior Director of KANSAS CITY POWER & LIGHT COMPANY, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Caray Giles
Notary Public

My commission expires:



SCHEDULE 1

TO

INTERIM USER AGREEMENT

625 ALUMINUM BETHGON COALPORTER RAILCARS

KCLX 595001 - 595250, Inclusive

KCLX 795001 - 795375, Inclusive

EXHIBIT "A"
TO
INTERIM USER AGREEMENT

CERTIFICATE OF ACCEPTANCE

I have been appointed as the duly authorized representative of Kansas City Power & Light Company ("KCPL") for the purpose of inspecting, accepting, and receiving delivery of the units of railroad equipment described below (the "Cars"), which are referred to in the Interim User Agreement dated as of January 31, 1995 (the "Agreement"), between Johnstown America Corporation ("Builder") and KCPL. Title to the Cars does not pass upon such acceptance, but only passes to KCPL or its assigns upon payment of the purchase price therefore and delivery of title to the Cars at the Closing of such Cars, as described in the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings as defined in the Agreement.

I hereby certify that with respect to the Cars:

1. Each Car has been inspected and is in good order.
2. Based on my determination that, to the best of my knowledge, each Car is in compliance with all applicable specifications, each Car is hereby accepted for all purposes of the Agreement and the Purchase Order.

Type of Equipment:

Aluminum BethGon
Coalporter Cars

Place Accepted:

Johnstown, Pennsylvania

Date Accepted:

Number of Cars:

Reporting Marks:

Car Numbers

Car Weights

THE UNDERSIGNED further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each Car the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT AND LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

Authorized Representative of KCPL

Date: _____, 1995